

HERISH BOYD

VS.

Respondent

Self-Insured

What is the nature and extent of claimant's injury and/or disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

The Award sets out findings of fact and conclusions of law and it is not necessary to repeat those herein. The Board adopts those findings and conclusions as its own.

Claimant began working for respondent on May 30, 2002, performing leak tests. On June 12, 2002, while picking up a wheel off of a conveyor belt, she twisted her back and felt a pop in her lower back. Claimant testified that she experienced immediate pain on the right side of her back. Claimant went home early that day after advising her supervisor, Marcus Brown, that she had suffered an injury. Claimant did not work the following day, but, instead, was referred to Mount Carmel Regional Medical Center in the Occupational Health Clinic by respondent's representative Tim Rakestraw.

At Occupational Health, claimant was referred to a nurse practitioner named Cheryl Lemmon. Nurse Lemmon first examined claimant on June 13, 2002, and was provided a history consistent with claimant's injury. She diagnosed right SI joint dysfunction, placed a 10-pound weight restriction on claimant, prescribed anti-inflammatory medication and muscle relaxants and pain medications, and referred claimant to chiropractor Tim J. Voss, D.C. Claimant was examined by Dr. Voss on June 13, 2002, for low back pain, pain into the hip region and sharp pain into her left foot. Claimant was initially authorized for three treatments with Dr. Voss. An additional two treatments were later authorized by respondent.

Dr. Voss testified that claimant made continuous progress, with both her left foot and low back symptoms significantly improving over the course of treatment. Claimant's foot pain was gone as of the June 19, 2002 examination. By the fifth visit on June 24, 2002, claimant was suffering only mild segmental dysfunction in the lumbar spine and left sacroiliac joint. Neurological and orthopedic tests were negative. Dr. Voss advised respondent, through letters provided to Occupational Health, that claimant suffered no permanent impairment as a result of the June 12 injury.

Claimant continued working for respondent, first at light duty and later at her regular job, until June 27, 2002, when she was terminated due to attendance problems. At the time of her termination, claimant did not inform Mr. Brown, her supervisor, that she was experiencing ongoing back complaints. Additionally, at the time of the last examination by Dr. Voss, when she was released to return to work, she failed to advise Dr. Voss that she was having ongoing back difficulties. Claimant was unable to explain these two omissions.

Shortly after leaving respondent, claimant went to work for a temporary agency identified as Adecco. Adecco placed her at Envision, a plastics plant. Claimant failed to advise anyone at Envision that she was having or alleging any back difficulties. Two weeks later, claimant was hired to work for Pitt Plastics, again through Adecco. Claimant was ultimately hired on permanently by Pitt Plastics. Claimant also failed to advise anyone at Pitt Plastics that she was having ongoing back difficulties. In fact, claimant sought no medical treatment after her June 24 final examination with Dr. Voss.

Claimant was referred to Edward J. Prostic, M.D., a board certified orthopedic surgeon, on October 23, 2002, at her attorney's request, for an examination and evaluation. Dr. Prostic found tenderness at the thoracolumbar junction and lumbosacral junction with forward flexion and one-third loss of lateral bend on each side, and identified hamstring tightness bilaterally. The remainder of the examination was normal. Dr. Prostic found claimant had suffered an 8 percent impairment to the body as a whole as a result of the injuries of June 12, 2002, with his impairment based upon the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). He also agreed that with appropriate treatment, claimant's complaints or problems could resolve. The treatment identified by Dr. Prostic as being appropriate for claimant involved a good aerobics program and anti-inflammatory medication.

Claimant was referred to board certified physical medicine and rehabilitation specialist Kevin D. Komes, M.D., on May 6, 2003, at respondent's request. At that time, claimant had pain in her low back with stiffness after waking up. He found claimant's complaints to be subjective, without any objective findings to support those complaints. He found claimant had suffered no permanent impairment based upon the AMA *Guides* (4th ed.) as a result of the June 12, 2002 injury.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.¹ The Administrative Law Judge found Dr. Voss to be the most credible of the health care providers. Dr. Voss had the opportunity to examine and treat claimant over a period of several weeks, seeing her a total of five times. Dr. Voss's letters and reports show steady progress and improvement to the point where claimant's symptoms had almost entirely disappeared. While claimant alleges ongoing back problems, she failed to advise Dr. Voss of problems at the time of the last examination, failed to advise her supervisor of any ongoing back problems at the time of her termination, and failed to seek additional medical care after Dr. Voss's June 24, 2002 last examination. The Board finds that claimant's testimony that she was having significant ongoing problems is not supported by the record. The Board affirms the Administrative Law Judge's finding that claimant failed to prove that she suffered any

¹ See K.S.A. 44-501 and K.S.A. 2001 Supp. 44-508(g).

permanent impairment as a result of the June 12, 2002 accident. The Award of the Administrative Law Judge denying claimant additional benefits is, therefore, affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Jon L. Frobish dated July 15, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Troy A. Unruh, Attorney for Respondent
Jon L. Frobish, Administrative Law Judge
Anne Haught, Acting Workers Compensation Director